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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

314-678

No. 1026 77

JOHN W. LEWIS,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS AND BRIEF IN SUPPORT THEREOF.

ODE L. RANKIN,
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 1036

JOHN W. LEWIS,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS AND BRIEF IN SUPPORT THEREOF.

Petition.

Petitioner, John W. Lewis, the above named defendant a resident of the County of Cook and State of Illinois, now confined in the penitentiary of Illinois, under the judgment of conviction for the crime of manslaughter entered in said cause in the Criminal Court of Cook County, Illinois, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Illinois entered in the above cause on December 12, 1940 on which a rehearing was denied on February 12, 1941.

Summary Statement of Matter Involved.

The Indictment.

The defendant, John W. Lewis, was indicted on May 31, 1938 by a Grand Jury of Cook County, Illinois on a charge of murder and held without bail. He waived a jury, was tried by the Court and convicted of manslaughter.

The indictment contained two murder counts. The first count charged that on May 19, 1938, in said County, the defendant, feloniously, wilfully and of his malice aforethought made an assault upon the body of one, Carl Edward Hill, and in the peace of the People of the State of Illinois, the defendant wilfully, unlawfully, feloniously and of his malice aforethought did stab, slash and wound said Hill in his body with a certain knife whereby said Hill received mortal wounds from which he, on the same day died and thereby the defendant killed and murdered said Hill in manner and form and by the said means contrary to the statute and against the peace and dignity of the People of the State of Illinois.

The second count is a skeleton count which charges in simple language that on May 19, 1938 the defendant, did unlawfully with malice aforethought by stabbing, kill and murder Carl Edward Hill contrary to the statute and against the peace and dignity of the People of the State of Illinois.

The Trial and Sentence.

On June 1, 1938, the defendant was arraigned and pleaded to the indictment

> "Not guilty in manner and form as charged therein and of this he puts himself upon the county and the said people do the like"

On June 20, 1938, defendant waived trial by jury and the cause was tried by the Court without a jury.

The record then shows:

> Testimony heard in part. Age of the defendant thirty one years. Further testimony heard and the court hearing the arguments of counsel continued the cause till the next day—June 21, 1940.

On June 21, 1938, the Court, (as is recited in the record)

> "being fully advised in the premises doth find the defendant guilty of manslaughter in manner and form as charged in the indictment."

and continued the cause to June 30, 1938.

On June 30, 1938, the court pronounced judgment upon the finding

> "That the said John W. Lewis is guilty of manslaughter in manner and form as charged in the indictment in this cause and the said finding and judgment of guilty"

and sentenced the defendant for the crime of manslaughter.

PROCEEDINGS IN SUPREME COURT OF ILLINOIS.

That defendant sued out a writ of error to the October 1940 term of the Supreme Court of Illinois to review said judgment and said cause was there briefed and argued by counsel for defendant and the State and taken under advisement; that at the December term of the Illinois Supreme Court, on December 12th, 1940, the Supreme Court of Illinois affirmed the judgment so entered in the Criminal Court of Cook County.

That a petition for rehearing was duly filed in the cause and considered by the Court and on February 12, 1941, the Supreme Court of Illinois denied the prayer of said petition for rehearing, making said judgment final, so far as the same may be reviewed by the courts of the State of Illinois.

It was assigned as error in the proceedings to review said judgment in the Supreme Court of Illinois that the

findings and judgment of the Criminal Court of Cook County were in violation of Sections 2, 9, 10 and 14 of Article II of the Constitution of the State of Illinois, in that the said judgment deprived the defendant of his liberty without due process of law; denied him the right to have made known to him the nature and cause of the accusation against him; and deprived him of the right not to be compelled to give evidence against himself.

And it was also assigned as error in the Supreme Court of Illinois that the said finding and judgment of the said Criminal Court of Cook County were in violation of the Fourteenth Amendment of the Constitution of the United States in that they constitute a deprivation of the liberty of the defendant without due process of law; and further assigned as error that the judgment was not responsive to the issues; that the indictment was not sufficient in either count to sustain the finding and judgment of the Criminal Court; and that there were no facts alleged in the indictment upon which the finding and judgment that defendant was guilty of manslaughter could be based.

THE JUDGMENT AND OPINION OF SUPREME COURT OF ILLINOIS.

The Supreme Court of the State of Illinois affirmed the judgment and in its opinion stated the questions upon the record to be that plaintiff in error claims that,

> "he was convicted of an offense with which he was not charged, in violation of the due process clause of the State and Federal Constitutions. He argues that this amounts to exempting the indictment and the proceedings from the constitutional requirement, and is an arbitrary and unreasonable classification in violation of his constitutional rights. The defendant in error (the People's) position is that the charge of murder includes therein a charge of manslaughter. These contentions constitute the decisive issues."

After considering the cause as so presented, the Supreme Court of Illinois held that,

> "The crime of manslaughter is embraced in a charge of murder, and the accused may be found not guilty of murder and convicted of manslaughter. Since the indictment must be held to charge manslaughter, plaintiff in error was thereby advised of the charge, and he has no ground to complain that his rights under the due process clause of the State or Federal Constitutions have been invaded. As the rule quoted in People *v.* Dugas, (310 Ill. 291) is limited to the crimes of murder and manslaughter, but applies generally to all offenses of a higher degree which embrace the elements of a lower crime of which the accused is convicted, there is no unconstitutional classification involved in applying the rule in this cause."

Jurisdiction.

JURISDICTION OF THE UNITED STATES SUPREME COURT TO REVIEW THE JUDGMENT OF THE SUPREME COURT OF ILLINOIS.

This Court has jurisdiction to review this cause because a Federal Constitutional question is distinctly raised and definitely ruled upon by the highest court of the State of Illinois adversely to the contention of the petitioner who presented the issue, and the constitutional questions there passed upon were the controlling issues before the court for its adjudication, and this Court has jurisdiction to review the judgment of the Supreme Court of Illinois and determine the jurisdiction of this Court from the record of the Supreme Court of Illinois.

State of Indiana v. *Brand,* 303 U. S. 95, 58 S. Ct., 82 L. Ed. 685, 113 A. L. R. 1482;

Commonwealth of Va. v. *Imperial Coal Sales Co.,* 293 U. S. 15;

Powell v. *Alabama,* 287 U. S. 45.

The defendant in this, a criminal case, was tried in the State court and there definitely claimed his constitutional rights were invaded and he has here presented the record of his trial so showing so as to invoke the jurisdiction of the United States Supreme Court.

In the case of *Keerl* v. *Montana,* 213 U. S. 135, 137, the Supreme Court said:

> "The defendant, during the trial having specifically claimed that the action of the court in denying him the benefit of the plea of once in jeopardy operated to deprive him of his liberty without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States, our jurisdiction of the writ of error cannot be questioned. Beer *v.* Massachusetts, 97 U. S. 25-30; Bohanna *v.* Nebraska, 118 U. S. 231; Boyd *v.* Thayar, 143 U. S. 135-161."

This record shows that defendant made his claim that in the trial court he was denied due process of law under the Constitution of the United States and now complains that the Supreme Court of Illinois specifically denied that claim of due process of law and it thus appears that the defendant has brought himself within its protection and within the jurisdiction of the Supreme Court of the United States.

Questions Presented.

The questions presented upon the record are:

Whether the defendant has been deprived of his liberty without due process of law under the Federal Constitutional Provision that every defendant in a criminal case has a right to have made known to him the nature and cause of the accusation against him, where the record shows an issue of murder only and fails to show any waiver of such murder issue by the prosecutor, nor any request by the defendant

for the trial of a manslaughter issue; but does show an unsolicited departure from the issue of murder by the trial judge and a finding and conviction of manslaughter.

Whether under these facts indictments for crimes which include lesser crimes are exempt from constitutional requirements, i. e., that a defendant before he can be put to trial for any crime is entitled to have made known to him the nature and cause of action against him upon which he is actually to be tried;

And whether under those facts a defendant is entitled to have notice that he is to be put to trial upon some unnamed lesser crime included in the crime charged in the indictment, which the prosecuting attorney will ask to have the jury pass upon;

And whether defendants who may be charged with crimes which include lesser crimes are unjustly, arbitrarily and unreasonably discriminated against by the holding that a defendant, when put to trial upon the major crime under a distinct charge and plea of not guilty of, say murder, may yet be gratuitously found guilty of manslaughter; and whether such procedure deprives a defendant of due process of law;

Does the holding of the Supreme Court of Illinois that the trial court may shift the issue from the specific charge in the indictment to one of the lesser crimes that may be included in the greater crime when the cause is submitted to the court upon the murder trial issue for decision deprive the defendant of his constitutional guaranty of due process of law.

Whether, under an issue of murder only, a finding of guilty of manslaughter by the trial court is made; and where the record does not show that the State has waived the murder issue; and where the record does not show that the defendant has asked that his guilt or innocence of the lesser

crime be adjudicated upon; is the finding of guilty of manslaughter responsive to the issue of murder; and is defendant deprived of due process of law by the Supreme Court of Illinois affirming a judgment upon such finding.

Whether a finding of guilty of manslaughter under an issue of murder only is a finding of not guilty generally so that defendant is entitled to his liberty.

Reasons Relied Upon for Allowance of Writ.

It is not found that the question here raised has been definitely passed upon by the Supreme Court of the United States nor by any court in the form presented.

It is thought that where strictness is the rule of decision and probabilities are not indulged in passing upon criminal records that the ruling should favor the defendant rather than the State.

The record shows that upon an issue of murder a jury was waived and the cause heard by the court as the trier of the facts and the court found defendant guilty of manslaughter, a matter not in issue and then gave judgment upon his finding; and thereby defendant contends that he has, in legal effect, been found not guilty of the charge of which he was tried and has been imprisoned for a crime, the cause or nature of which he had no notice. Defendant claims this is not due process under the Federal Constitution. He has exhausted his right of review in the courts of Illinois and has now no further haven for relief than this Court under its power to protect the defendant in his constitutional privileges.

The Supreme Court of Illinois denied to petitioner his constitutional right to have due process of law as guaranteed under the Fourteenth Amendment of the Federal Constitution and erred in so doing.

WHEREFORE it is respectfully requested that this petition for a writ of certiorari be allowed and that the writ be granted to review the judgment of the Supreme Court of the State of Illinois.

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